IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RASHAD BOWMAN, Plaintiff/Appellant, v. ARIZONA DEPARTMENT OF CORRECTIONS, Defendant/Appellee.	2 CA-CV 2006-0185 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200501505

Honorable Boyd T. Johnson, Judge

AFFIRMED

Rashad Bowman — Florence
In Propria Persona

Terry Goddard, Arizona Attorney General
By A.J. Rogers — Phoenix
Attorneys for Defendant/Appellee

E S P I N O S A, Judge.

¶1 Appellant Rashad Bowman appeals from an order of the Pinal County Superior Court denying his motion to domesticate a foreign order. We affirm.

Factual and Procedural Background

¶2 Bowman has been confined to the Arizona Department of Corrections (ADOC) since 2002. In 2005, he was a party to a family court proceeding in the Tenth Judicial District Court of Minnesota. In February of that year, the Minnesota court found that the "use of a tape recording device . . . is necessary to facilitate contact between [Bowman] and his daughter"[1] and ordered that

> any corrections facility incarcerating the Defendant, Rashad Summer Bowman, Sr., shall allow him to have access to an audio recording device for purposes of creating audio tapes to send to his daughter, Alyssa Nicole Funke and for purposes of listening to any such tape sent to him by his daughter. Such access shall be subject to the regulations and procedures of the facility.

Bowman's counsel in Minnesota, Richard C. Ilkka, contacted ADOC in July to request that it comply with the order and provide Bowman access to an audio recording device. ADOC responded that it was "not able to [ac]cept out of state orders." In August, Bowman filed a grievance with ADOC, again requesting access to a recording device, to which ADOC again responded that it could not "abide by an out of state court order." Bowman appealed the denial of his grievance, and ADOC denied his appeal.

[1]The record suggests Bowman's daughter resides in Minnesota and has a disability that requires her and Bowman to use an audio recording device to communicate.

¶3 In November, apparently acting upon the advice of a superior court judge,[2] Bowman filed a motion in the Pinal County Superior Court to domesticate the Minnesota order.[3] In response, ADOC asserted the order could not be enforced against it because it had not been a party to the proceeding in Minnesota. The superior court held the order was "not entitled to full faith and credit and enforcement" because it had been "issued in a proceeding to which the State of Arizona was not a party." This appeal followed.[4]

Discussion

¶4 The Full Faith and Credit Clause of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial

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[2]The record indicates Bowman solicited advice from a Yavapai County Superior Court judge in September 2005 about how he might have the Minnesota order enforced. In an October letter, the judge suggested he file "a separate action in Pinal County in order to domesticate the decision of the Minnesota court."

[3]Arizona's Revised Uniform Enforcement of Foreign Judgments Act, A.R.S. §§ 12-1701 through 12-1708, provides that an order from any foreign court "may be filed in the office of the clerk of any superior court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the superior court of this state."

[4]The superior court ordered that Bowman's first notice of appeal not be processed because it was "not in the proper format." But, as ADOC candidly concedes in its answering brief, the notice was sufficient because it was timely filed. *See* Ariz. R. Civ. App. P. 9(a); 17B A.R.S.; *Mayer v. State*, 184 Ariz. 242, 244, 908 P.2d 56, 58 (App. 1995) ("[A] notice of appeal by a *pro se* prisoner is deemed filed when it is properly addressed and delivered to prison authorities for forwarding to the clerk of the superior court."). The notice substantially complied with the Rules of Civil Appellate Procedure, *see* Rule 13, Ariz. R. Civ. App. P., 17B A.R.S.; and it neither misled nor prejudiced ADOC, which ADOC also expressly concedes. *See Hill v. City of Phoenix*, 193 Ariz. 570, ¶ 10, 975 P.2d 700, 702-03 (1999) (notice of appeal that substantially complies with Rules of Civil Appellate Procedure is sufficient "so long as the defect has neither misled nor prejudiced an opposing party").

Proceedings of every other State." U.S. Const. art. IV, § 1. This clause requires states to respect and enforce orders rendered in the courts of their sister states. *See Oyakawa v. Gillett*, 175 Ariz. 226, 228, 854 P.2d 1212, 1214 (App. 1993). However, an order entered by a court in another state need not be given full faith and credit if the interested parties were not given sufficient notice of the proceeding to satisfy constitutional due process standards, i.e., "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Pioneer Fed. Sav. Bank v. Driver*, 166 Ariz. 585, 588, 804 P.2d 118, 121 (App. 1990).

¶5 Although Bowman seeks to have full faith and credit afforded to the Minnesota court's unilateral order, ADOC, as the agency with custody of Bowman, obviously had an interest in any proceeding affecting the conditions of his incarceration. Bowman, however, presented no evidence to suggest ADOC was served with process or in any other way notified that a proceeding would take place in which its interests would be affected. ADOC was neither a named party in the Minnesota action nor given an opportunity to present its objections to the court. Therefore, we cannot say it had notice of the proceeding that would satisfy constitutional due process standards. *See McDonnell v. S. Pac. Co.*, 79 Ariz. 10, 12, 281 P.2d 792, 793 (1955) (for judgment to be "valid and binding," the "parties affected must be either legally served with process or have voluntarily appeared," and court has no jurisdiction to render judgment against nonparty); *see also Pioneer Fed. Sav. Bank*, 166 Ariz. at 588, 804 P.2d at 121. And Bowman presented no evidence suggesting the Minnesota court

determined ADOC had been given adequate notice—its order does not specifically refer to ADOC but only generally refers to "any corrections facility incarcerating [Bowman]." S*ee generally Lofts v. Superior Court*, 140 Ariz. 407, 410, 682 P.2d 412, 415 (1984) (foreign court's determination after contested hearing of personal jurisdiction is *res judicata*).

¶6 Bowman does not contend ADOC was given adequate notice, but instead, claims it was an "impli[cit]" party to the proceeding because he obtained the order upon its "recommendation" and "instruction." The record does not support Bowman's assertion that ADOC instructed him to obtain a court order from the Minnesota court. But, regardless of any instruction ADOC might have given him, its right to due process required that it be given notice of the proceeding, and because it was not, the order is not entitled to full faith and credit. *See Pioneer Fed. Sav. Bank*, 166 Ariz. at 588, 804 P.2d at 121 (if Arizona court finds notice given "failed to satisfy constitutional due process standards, it may properly refuse to grant full faith and credit to the [foreign] judgment"). The superior court, therefore, properly refused to domesticate and enforce the order. *See id. Compare* A.R.S. § 12-1702 (foreign judgment is "subject to the same procedures, defenses and proceedings . . . as a judgment of a superior court"), *with Spiegel v. Board of Supervisors of Maricopa County*, 175 Ariz. 479, 482, 857 P.2d 1333, 1336 ("due process clauses of both the United States and Arizona Constitutions" require interested parties be given effective notice of court proceedings), *and Ronan v. First Nat'l Bank of Ariz.*, 90 Ariz. 341, 348, 367 P.2d 950, 954 (1962) ("[D]ue

process requires that a party . . . be notified of an impending action in which [its] interests may be adversely affected . . . .").

¶7 Bowman alternatively argues that the order satisfies ADOC's policy for permitting an inmate to access an audio recording device and that it is therefore entitled to enforcement. ADOC's policy, as set forth in Department Order 909, provides that "an inmate may request the use of" an audio recording device "when a condition, such as literacy level" or a "medical condition" is present. We first note the Minnesota court's order does not state the reason that an audio recording device is "necessary to facilitate contact between [Bowman] and his daughter." But, even if the order specified that such a device is necessary due to his or his daughter's literacy level or a medical condition, the court's factual findings on this issue would not affect ADOC's right to be given notice of the proceeding. *See Spiegel*, 175 Ariz. at 482, 857 P.2d at 1336.

¶8 Finally, Bowman correctly points out that Arizona courts recognize both "the legality of a marriage in another state," *see* A.R.S. § 25-112, and the "relevance of a child support order from another state," *see* 28 U.S.C.A. § 1738B, and claims these principles require that the order be enforced. The order, however, does not pertain to the recognition of a marriage or the enforcement of a child support order. Therefore, these statutes have no relevance to this case.

Disposition

¶9 The superior court's order is affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge